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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/647,912	08/25/2003	Helmut Thoma	Westphal.7276	2331
50811	7590	12/11/2006	EXAMINER	
O'SHEA, GETZ & KOSAKOWSKI, P.C. 1500 MAIN ST. SUITE 912 SPRINGFIELD, MA 01115			BOES, TERENCE	
			ART UNIT	PAPER NUMBER
			3682	

DATE MAILED: 12/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/647,912

Applicant(s)

THOMA, HELMUT

Examiner

Terence Boes

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 September 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 2-10, 15-17 and 20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 11-14, 18 and 19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 August 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

1. Claims 11-14, 18, and 19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 11 and 18, lines 11 and 13 recite "...a certain amount of..." rendering the claims indefinite. How much is a certain amount?

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 11-14, 18 and 19, as best understood, are rejected under 35 U.S.C. 102(b) as being anticipated by Shinichi JP 59117951.

Shinichi discloses:

- a first gear (13) having a plurality of first gear teeth located along the radial periphery of the first gear;
- a second gear (12) having a plurality of second gear teeth located along the radial periphery of the second gear

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- wherein the first and second gears are disposed adjacent one another on the shaft (gears are shown adjacent, shaft is inherent if not disclosed):
- where the elasticity of the first gear is greater than that of the second gear (see summary of invention),
- where the strength of the second gear is greater than that of the first gear (see summary of invention),
- wherein the first gear and the second gear are arranged co-axially on the shaft such that the first and second gears rotate in the same direction relative to the shaft and independently, of each other (see abstract).
- where the first gear has a greater elasticity than that of the second gear, such that in the absence of a certain amount of load the first gear is engaged with the cooperating gear and the second gear is disengaged from the cooperating gear and in the presence of a certain amount of torque both the first and second gears engage(s) the cooperating gear (see abstract).
- wherein the first gear teeth and the second gear teeth are helically arranged adjacent to one another (see figure 4C).
- wherein the first gear teeth and the second gear teeth are helically arranged offset to one another (see figures 3 and 4C).
- wherein the first material comprises plastic and second material is metallic.

Response to Arguments

3. Applicant's arguments filed 09/22/2006 have been fully considered but they are not persuasive.

Applicant argues:

1. Shinichi fails to disclose "where the first and second gears are operably positioned co-axially on the shaft to allow independent rotation of the first and second gears in the same direction with respect to each other".
 - a. While features of an apparatus may be recited either structurally or functionally, claims directed to >an< apparatus must be distinguished from the prior art in terms of structure rather than function. Therefore, the claims are rejected since all claim limitations have been met as disclosed above (see MPEP 2114).
 - b. Furthermore, Shinichi discloses within the abstract "When the gears 11, 12 are meshed, the gear 13 engages with the gear 11 always earlier before the gear 12 engages with the gear 11..." Certainly the gears rotate independently in the time period between the initial engagement of gear 13 and before gear 12 has engaged, as claimed. Furthermore, the gears rotate in the same direction.

Regarding claims 1 and 11-13, arguments are moot in view of new grounds of rejection.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Terence Boes whose telephone number is (571) 272-4898. The examiner can normally be reached on Monday - Friday 9:00 AM - 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Ridley can be reached on (571) 272-6917. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

TB

12/1/06



RICHARD RIDLEY
SUPERVISORY PATENT EXAMINER